House Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 30

HOUSE BILL 2228

AN ACT

AMENDING SECTION 20-119, ARIZONA REVISED STATUTES; RELATING TO CHARITABLE GIFT ANNUITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 20-119, Arizona Revised Statutes, is amended to read:

20-119. Charitable gift annuities; audited financial statements; disclosure statement; commissions prohibited; definitions

~~A. If a charitable organization enters into an agreement for a qualified charitable gift annuity, the charitable organization shall provide a written notice to the donor in the annuity agreement that states that the charitable gift annuity is not insurance under the laws of this state, is not subject to regulation by the director and is not protected by any state guaranty fund.~~

~~B. The charitable organization that provides the notice required by subsection A shall provide the notice in a separate paragraph in a print size that is at least the size used in the annuity agreement generally.~~

A. ON THE DAY A CHARITABLE ORGANIZATION ENTERS INTO AN AGREEMENT FOR A CHARITABLE GIFT ANNUITY, THE CHARITABLE ORGANIZATION SHALL HAVE:

1. A MINIMUM OF THREE HUNDRED THOUSAND DOLLARS IN UNRESTRICTED CASH, CASH EQUIVALENTS OR PUBLICLY TRADED SECURITIES, EXCLUSIVE OF ASSETS FUNDING THE CHARITABLE GIFT ANNUITY AGREEMENT.

2. BEEN IN CONTINUOUS OPERATION FOR AT LEAST THREE YEARS OR IS A SUCCESSOR OR AFFILIATE OF A CHARITABLE ORGANIZATION THAT HAS BEEN IN CONTINUOUS OPERATION FOR AT LEAST THREE YEARS.

3. HAD AN ANNUAL AUDIT OF ITS OPERATIONS CONDUCTED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT FOR THE PAST TWO FISCAL YEARS.

B. ANY PERSON OFFERING A CHARITABLE GIFT ANNUITY IN THIS STATE SHALL PROVIDE THE FOLLOWING INFORMATION IN WRITING TO A PROSPECTIVE DONOR BEFORE ENTERING INTO AN AGREEMENT FOR A CHARITABLE GIFT ANNUITY OR RECEIVING ANY TRANSFER OF CASH OR PROPERTY FROM THE DONOR:

1. THE NAME AND ADDRESS OF THE CHARITABLE ORGANIZATION OFFERING THE CHARITABLE GIFT ANNUITY TO THE DONOR.

2. A DESCRIPTION OF THE CHARITABLE ORGANIZATION OFFERING THE CHARITABLE GIFT ANNUITY, INCLUDING ITS STATE OF ORGANIZATION, ITS DATE OF ORGANIZATION AND ITS CURRENT OPERATIONS.

3. A STATEMENT THAT THE CHARITABLE ORGANIZATION WILL MAKE ADDITIONAL FINANCIAL INFORMATION, INCLUDING ITS MOST CURRENT AUDITED AND INTERIM FINANCIAL STATEMENTS, AVAILABLE TO THE DONOR ON REQUEST. THIS STATEMENT SHALL BE CONSPICUOUS AND PRINTED IN AT LEAST TEN POINT BOLD-FACED TYPE.

4. A DISCLOSURE THAT THE CHARITABLE GIFT ANNUITY IS NOT INSURANCE UNDER THE LAWS OF THIS STATE, IS NOT SUBJECT TO REGULATION BY THE DIRECTOR AND IS NOT PROTECTED BY ANY STATE GUARANTY FUND.

5. A DISCLOSURE THAT THIS STATE AND THE DEPARTMENT HAVE NOT APPROVED OR DISAPPROVED OF THE CHARITABLE GIFT ANNUITY BEING OFFERED AND HAVE NOT DETERMINED WHETHER ANY OF THE INFORMATION PROVIDED TO THE DONOR IS TRUTHFUL OR COMPLETE.

C. IF ANY AGREEMENT BETWEEN A CHARITABLE ORGANIZATION AND A DONOR FOR A CHARITABLE GIFT ANNUITY IS ENTERED IN VIOLATION OF THIS SECTION, THE DONOR MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION TO RECOVER THE AMOUNT OF THE CONSIDERATION PAID FOR THE CHARITABLE GIFT ANNUITY, WITH INTEREST, TAXABLE COURT COSTS AND REASONABLE ATTORNEY FEES, LESS THE AMOUNT OF ANY INCOME RECEIVED FROM OWNERSHIP OF THE CHARITABLE GIFT ANNUITY, ON TENDER OF THE CHARITABLE GIFT ANNUITY OR THE AGREEMENT FOR IT. ANY SUCH ACTION SHALL BE BROUGHT WITHIN TWO YEARS OF THE DATE THE DONOR DISCOVERED OR REASONABLY SHOULD HAVE DISCOVERED THAT THE CHARITABLE GIFT ANNUITY TRANSACTION DID NOT COMPLY WITH THIS SECTION.

D. IN CONNECTION WITH THE SOLICITATION OR NEGOTIATION OF A CHARITABLE GIFT ANNUITY, A PERSON SHALL NOT DIRECTLY OR INDIRECTLY PAY OR ACCEPT A COMMISSION, FEE OR OTHER FORM OF COMPENSATION CONTINGENT ON THE DONATION OR AMOUNT OF THE CHARITABLE GIFT ANNUITY. THIS SUBSECTION DOES NOT PROHIBIT OR RESTRICT A CHARITABLE ORGANIZATION FROM PAYING THE REGULAR COMPENSATION OWED TO ITS EMPLOYEES OR THE DISTRIBUTION OF MONIES FOR AUTHORIZED CHARITABLE PURPOSES.

~~C.~~ E. For the purposes of this section:

1. "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity that is payable over one or two lives under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value is a charitable deduction for federal tax purposes.

2. "Charitable organization" means an entity that is described in section 501(c)(3) or 170(c) of the internal revenue code of 1986.

APPROVED BY THE GOVERNOR APRIL 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2004.